

## **CITY OF ALAMEDA**

### **Memorandum**

To: Honorable Mayor and  
Members of the City Council

From: Lisa Goldman  
Acting City Manager

Date: April 5, 2011

Re: Provide Direction on Improving the City of Alameda's Secondhand Smoke  
and Tobacco Control Policies

### **BACKGROUND**

California has long been considered a pioneer with its statewide initiatives to reduce the harmful effects of smoking. The 1988 passage of Proposition 99, the Tobacco Tax and Health Protection Act, imposed a 25 cent per pack cigarette tax and created statewide programs to reduce smoking. By 1993, local jurisdictions throughout the state had enacted smoke-free workplace ordinances that protected nearly two-thirds of California workers. The success of local tobacco control legislation helped inform the 1994 creation and passage of Assembly Bill (AB) 13, the California Smoke-Free Workplace Act. This landmark bill created a 100% smoke-free environment for most workplaces.

The passage of AB 13 was heralded as a groundbreaking replacement for a "patchwork of local laws," but it was also criticized for its negative effect upon local tobacco control initiatives because it was limited to workplace protections. In addition, its passage created the perception that local legislation was no longer necessary. In researching this issue, staff discovered that many cities over the last several years have started to implement additional protections beyond those provided by state law.

### **DISCUSSION**

Local governments that have chosen to enact tobacco control ordinances that are stronger than the protections provided by the state have generally focused their efforts in four areas: protections for indoor or enclosed places; protections for outdoor public places; secondhand smoke housing policies; and regulation of sales. (Exhibit 1 describes the tobacco control policies in place in Alameda County cities.)

Recently, the community has expressed interest in improving the City of Alameda's secondhand smoke and tobacco control policies. Rather than presenting the City Council with an ordinance that might not meet the City Council's interests in this area, staff thought it prudent to request the City Council's policy direction regarding each of the four potential areas for regulation. Staff relied on several sources to compile the information below, including the Public Health Law and Policy's Technical Assistance

and Legal Center, the American Lung Association's Center for Tobacco Policy and Organizing, and Alameda County's Tobacco Control Program.

### **Protections for Indoor or Enclosed Work Places**

AB 13, codified in Labor Code section 6404.5, prohibits smoking in most indoor workplaces, but exempts certain workplace environments. Most other cities in Alameda County have acted to extend protections to cover these areas. A comprehensive secondhand smoke ordinance would eliminate the exemptions to cover all enclosed workplace environments, as well as other enclosed places that are open to the public.

Examples of enclosed public or workplace environments where protections can be extended include:

- Private residences used as licensed child care and health care facilities
- Taxi cabs
- Tobacco retailers/smoking lounges/hookah bars
- Truck cabs
- Hotel lobbies
- Rooms in hotels/motels (by increasing the required number of smoke-free rooms; state law requires 35%)
- Banquet rooms (hotels)
- Warehouse facilities
- Small businesses with fewer than six employees
- Owner-only workplaces that are open to the public
- Public places such as sports arenas or convention halls

### **Protections for Outdoor Public Places**

There are numerous studies concluding that secondhand smoke is harmful to individuals, including a report from the California Air Resources Board declaring secondhand smoke as a toxic air contaminant and a report from the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke. A 2007 study conducted by researchers from Stanford University found that outdoor secondhand smoke exposure can be comparable to indoor secondhand smoke levels when an individual is near a smoker outdoors. Many cities throughout the state have used these compelling healthcare studies as the basis for implementing smoking prohibitions in outdoor public places. Most of the cities in Alameda County have extended some level of protection from secondhand smoke to outdoor public places. Eighty-three cities and counties in California have passed what are considered to be comprehensive outdoor secondhand smoke ordinances, including locally the cities of San Leandro, Dublin, Hayward, Albany, Berkeley, and Emeryville.

Two approaches have been generally accepted as the best methodologies to implementing a comprehensive outdoor secondhand smoke ordinance. The first approach, known as the "inclusive approach," legislates a complete ban on smoking in

all outdoor public places. Three cities in Southern California have adopted this type of ordinance.

The second approach, known as the "listing approach," targets seven key outdoor areas for protection. The seven areas targeted for protection under the listing approach include:

1. Dining areas: defined as outdoor seating at restaurants, bars, etc.
2. Entryways (reasonable distance): defined as within a certain distance of doors, windows, and other openings into enclosed areas.
3. Public events: defined as farmers' markets, fairs, concerts, etc.
4. Recreation areas: defined as parks, trails, sports fields, etc.
5. Service areas: defined as bus stops, ticket lines, ATM lines, taxi stands, etc.
6. Sidewalks: defined as public sidewalks in downtown shopping and business areas.
7. Worksites: defined as any outdoor working area, such as construction areas.

Under the listing approach, the protections extended to these seven targeted areas must go beyond any protections currently offered by state law, which prohibits smoking within 20 feet of the main entrance, exits, and windows of government buildings, and within 25 feet of tot lots and playgrounds. To be considered as a comprehensive secondhand smoke policy by policy advocates, five of the seven areas targeted for protection must be included in the ordinance.

Other provisions that may be included in an ordinance regulating smoking in public places include:

- Requiring that No Smoking signs be posted
- Prohibiting the placement of ash cans and ashtrays
- Requiring commercial property owners and managers to prevent patrons and guests from illegally using tobacco on their premises

## **Secondhand Smoke Housing Policies**

Smoke in multi-unit housing poses health problems for non-smoking residents through the drifting of smoke from neighboring units, balconies, and outdoor spaces. The Surgeon General has determined that the dangers from secondhand smoke cannot be controlled by ventilation, air cleaning, or the separation of smokers from non-smokers. Several studies have concluded that smoking in multi-unit housing also contributes to higher maintenance and insurance costs. Many cities in California have begun to address the health dangers and additional costs related to secondhand smoke by implementing secondhand smoke housing policies.

As of January 2011, 101 communities in California have adopted some form of secondhand smoke housing policy, including the neighboring cities of Albany, Dublin, Oakland, Emeryville, and Union City. In 2008, the Alameda Housing Authority (AHA)

adopted a smoke-free housing policy that has become effective in about one-half of the complexes owned or managed by AHA. The AHA's policy will be phased in for the rest of AHA's complexes during 2011.

Secondhand smoke housing policies are complex because the provisions necessary to implement a secondhand smoke housing policy are varied. Generally, the provisions of a secondhand smoke housing policy can be broken up into three policy areas: common area prohibitions, individual unit prohibitions, and the size and type of multi-unit housing to be regulated.

#### *Common Area Prohibitions*

Most housing policies include a prohibition on smoking in both indoor and outdoor common areas, except for areas designated for smoking that meet certain criteria. Provisions for outdoor buffer zones are also another important aspect for determining where smoking may be prohibited. Buffer zones protect tenants from drifting smoke from adjacent areas that can include balconies, patios, and decks that are within a "reasonable distance" of enclosed areas where smoking is prohibited.

#### *Individual Unit Prohibitions*

Restricting smoking within individual rental units is an important consideration when drafting secondhand smoke housing policies. The American Lung Association supports prohibiting smoking in 100% of multi-unit rental housing due to the public health impacts of secondhand smoke, but recognizes that public policy makers must also consider the privacy rights of smokers and the logistics surrounding the implementation of secondhand smoke housing policies. Some cities use a tiered approach to secondhand smoke housing protections by requiring that new complexes be 100% smoke-free, while permitting existing complexes to allow for a certain percentage of smoking units.

A 2009 report from the California Department of Public Health revealed that 13.1% of Californians are smokers, down from 22.7% in 1988. Policy makers are encouraged to consider the percentage of non-smokers and the increased costs associated with maintaining smoking units when determining the percentage of new and existing units that shall be smoke-free. Other provisions that support the implementation of secondhand smoke housing policies include reasonable phase-in periods and the clustering of smoking units so that secondhand smoke exposure is limited as much as possible.

#### *The Size and Type of Multi-Unit Housing Regulated*

The minimum size of the multi-unit housing complex upon which to impose secondhand smoking regulations needs to be determined. The size of complexes that are regulated vary by city, and often depend on the other types of provisions that are included in the ordinance. Exhibit 2 is a summary of California cities with smoke-free housing provisions that demonstrates how regulatory provisions can vary by city. As shown in Exhibit 2, the minimum thresholds at which regulations are imposed by other cities

include: two units, four units, ten units, and up to 16 or more units. The City of Dublin chose to regulate complexes with 16 or more units since state law requires on-site resident managers for complexes of this size.

The following table identifies the number of multi-unit housing complexes in Alameda, organized into categories by the size of the complex. The table also identifies the number of complexes in each category, and the number of residential units contained in each category.

Size of Complex	Number of Complexes	Number of Units
2 Units	1,351	2,702
3 to 6 Units	1,266	5,098
7 to 15 Units	252	2,338
16 Units or Larger	560	8,912
Total	3,429	19,050

The rights of condominium owners (both non-smokers and smokers) pose a difficult challenge for policy makers because the regulatory avenues used to mitigate the dangers of secondhand smoke in rental housing, i.e. the clustering of smoking units, is not as practical for condominiums, since they are individually owned. Options available to policy makers to extend secondhand smoke protections to condominium complexes include:

- Prohibiting smoking in common areas
- Establishing reasonable distance provisions
- Requiring the disclosure of smoking units and areas at the time of sale and leasing of a condominium unit
- Declaring secondhand smoke a nuisance

Ten cities in California have declared secondhand smoke to be a nuisance. A nuisance declaration makes it easier for an individual to seek the redress of grievances through the civil court system, because a nuisance declaration lessens the burden of proof for an individual seeking private civil action. In the housing context, declaring secondhand smoke a nuisance is helpful because it eliminates the need to prove that some particular level of exposure has occurred and then to prove that such exposure is an unjustified intrusion or hazard.

Other provisions that can be included in a secondhand smoke housing ordinance include:

- Requiring no smoking lease terms in rental agreements
- Requiring landlords to disclose where smoking is allowed, including which units
- Requiring landlords to submit diagrams of smoking and non-smoking units to City officials
- Including motels and hotels with long term lodging policies

## **Regulation of Tobacco Sales**

The California Department of Public Health reports that three out of four adult smokers started using tobacco before the age of 18, and considers the limitation of youth access to tobacco as a critical component to improving public health. Many communities in California are regulating the location and operation of tobacco retailers as a way to reduce the illegal sale of tobacco to minors.

Tobacco retail licensing laws and land use controls are being credited with helping to reduce the illegal sale of tobacco to minors. The California Department of Public Health revealed that only 7.7% of retailers surveyed in 2010 sold tobacco to minors, down from 8.6% in 2009, and 12.6% in 2008. When the state began monitoring in 1995, the minors participating in the survey were able to buy tobacco products during 37% of tobacco purchase attempts.

### *Tobacco Retail Licensing*

Under the Cigarette and Tobacco Products Licensing Act of 2003, businesses that sell cigarettes and tobacco products in California are required to have a state-issued retailer's license. License holders are responsible for ensuring that they display their license, maintain accurate sales records, and allow inspection of these records. It is illegal under state and federal law for retailers to sell cigarettes or tobacco products to minors.

Many cities in California have adopted local licensing programs as an additional mechanism for enforcing federal and state tobacco control laws. As of December 2010, 109 cities and counties in California have adopted local tobacco retailer licensing ordinances.

Four elements are available as policy options when crafting a tobacco retail license program:

1. Requiring all tobacco retailers to obtain a local license and renew it annually
2. Providing that violations of any federal, state, or local tobacco control law is also a violation of the license
3. Authorizing suspension or revocation of the local license for any violation of the license terms, and identify a dedicated enforcement agency
4. Establishing a sufficient license fee to fund all costs of administration, implementation, and enforcement of the license

The fourth element, establishing a sufficient license fee, is particularly critical to the adoption of an effective licensing ordinance. Licensing fees are permissible but are limited to the actual costs associated with necessary government regulation. Fees charged by other cities for ordinances containing all four policy options average \$300 per year, with the highest fees (\$1500) charged by the City of Oakland. The fee structure established by those jurisdictions with local licensing regulations does not

always represent a full cost recovery of administering this type of program. Currently, there are 67 retailers with state-issued tobacco licenses in the City of Alameda.

### *Land Use Options*

Municipalities may restrict the location and type of tobacco retailers and their permitted purposes through the use of zoning ordinances and conditional use permits. Currently, the City's zoning code prohibits primary tobacco retailers in the Community Commercial Zone (Webster and Park street business areas) pursuant to subsection 30-4.9A(b)(2) of the Alameda Municipal Code (AMC).

Additional policy options available include:

- Amending the AMC to specifically prohibit primary tobacco retailers in all zones
- Clarifying the definition of primary use vs. accessory use
- Establishing conditional use permits for new tobacco retailers (with accessory use)
- Exploring regulatory options for existing tobacco retailers
- Setting limits on the number of new tobacco retailers and where they can be located, i.e. within a certain distance of schools, parks, retail districts, etc.

### **Education and Enforcement**

Compliance is considered a strong measure of secondhand smoke and tobacco control policies, and the key to successful compliance is education and enforcement. Secondhand smoke and tobacco control laws are typically complaint-driven and self enforcing. Ordinances that contain some sort of educational component, where the public is informed about the relevant regulations, are particularly helpful in instances where regulations are supported by self-enforcement.

Education material and grant funding is available from Alameda County and smoke-free advocacy groups like the American Lung Association. Education options available to cities seeking to implement secondhand smoke and tobacco control policies include:

- Public meetings and legal notices
- Community informational meetings
- Publishing of articles
- Letters to affected businesses
- Creation of information page on city website and government channel
- Posting of public signs
- Creation of marketing material, brochures and stickers

There are several methods that local governments can use to enforce secondhand smoke ordinances. These include civil, administrative, and for example, sales of tobacco products to minors, criminal enforcement. Pursuant to the Alameda Municipal

Code, the sale of tobacco products to minors is a misdemeanor. Examples of enforcement options available include:

- Designating specific personnel to enforce the ordinance, such as the City Attorney, City Manager, Police Chief, or Code Enforcement
- Declaring that violations based on illegal smoking be considered an infraction or misdemeanor with fixed fine amounts of no more than \$100 (maximum penalty under state law) for first violations
- Declaring that any violation of the ordinance is an infraction
- Allowing the City to file civil actions for violations
- Declaring that secondhand smoke constitutes a nuisance

As stated, by declaring that secondhand smoke is a nuisance, private methods of enforcement through the civil court systems also become available.

#### FINANCIAL IMPACT

There is no financial impact associated with providing policy direction to staff on tobacco control ordinances. Existing resources in the City Manager's Office, City Attorney's Office, and Finance Department will be sufficient to enable staff to draft ordinances based on the City Council's direction.

#### RECOMMENDATION

Provide direction on improving the City of Alameda's secondhand smoke and tobacco control policies.

Respectfully submitted,

  
Terri Wright  
Senior Management Analyst

Exhibits:

1. Tobacco Control Provisions in Alameda County Cities
2. California Cities with Smoke-Free Housing Provisions



# Tobacco Control Provisions - Cities of Alameda County

## Exhibit 1

Tobacco Control Provisions		Alameda	Albany	Berkeley	Dublin	Emeryville	Fremont	Hayward	Oakland	San Leandro	Union City
Smoke-Free Workplace Provisions	Business with less than six employees	state law	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Company Vehicles	state law	✓	✓	state law	✓	✓	state law	✓	✓	✓
	Hotel/Motel Lobby	state law	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Hotel/Motel Rooms	state law	80%	75%	35%	60%	60%	35%	35%	75%	60%
	Meeting/Banquet Rooms	state law	state law	✓	✓	✓	state law	state law	✓	✓	✓
	Tobacco Shops	no provision	no provision	no provision	✓	✓	no provision	no provision	no provision	no provision	✓
	Hookah Bars	no provision	no provision	✓	✓	not permitted	no provision	no provision	no provision	no provision	✓
Smoke-Free Outdoor Air Provisions	Dining - anywhere food and drinks are being served	no provision	✓	✓	✓	✓	no provision	✓	✓	✓	✓
	Entryways - reasonable smoking distance from enclosed areas	no provision	25 ft.	25 ft.	20 ft.	✓	yes, not delineated by footage	20 ft.	25 ft.	20 ft.	25 ft.
	Public Events - farmers markets, malls, fairs	no provision	✓	✓	some events	no provision	no provision	some events	no provision	✓	✓
	Recreation Areas* - parks, playgrounds, fields, docks	no provision	✓	✓	some events	✓	no provision	✓	✓	✓	✓
	Service Lines (areas) - ATM, telephone, bus stops	no provision	✓	✓	✓	✓	no provision	✓	✓	✓	✓
	Sidewalks	no provision	✓	✓	no provision	no provision	no provision	✓	no provision	no provision	no provision
Secondhand Smoke Housing Provisions	Percentage of non-smoking units in multi-family	no provision	no provision	no provision	50%	child & home care	no provision	no provision	child & home care	child & home care	100%
	Non-Smoking Common Areas	no provision	✓	enclosed areas only	✓	✓	no provision	no provision	✓	✓	enclosed areas only
	Requires landlord disclosure regarding designated smoking	no provision	✓	no provisions	✓	no provision	no provision	no provision	✓	no provision	no provision
	Size of multi-family complex	no provisions	2 or more	no provisions	16 or more	no provisions	no provisions	no provisions	2 or more	no provisions	2 or more
	Secondhand smoke public nuisance	no provision	no provision	no provision	✓	✓	no provision	no provision	no provision	no provision	✓
	Condo included in provisions	no provision	disclosure provisions	no provision	no provision	no provision	no provision	no provision	disclosure provisions	no provision	no provision
Reducing Sales	Restrictions on location & zoning of smoke shops	Park & Webster Sts. Only	✓	no provision	no provision	1000 ft. from schools & parks	no provision	no provision	✓	1500 ft. from schools, parks, & libraries	no provision
	Tobacco Retailer Licensing	no provision	✓	✓	no provision	no provision	no provision	no provision	✓	no provision	no provision

\* Beaches in Alameda are under the jurisdiction of the State or East Bay Regional Parks

California Cities with Smoke-Free Housing Provisions

Exhibit 2

Jurisdiction	Date of Ordinance	Complex Size	Condos Included	Common Areas	Individual Unit Protections				Group Units	Balconies & Patios	Buffer Zones	Lease Terms	Discl.	Floor Plan	Nuisance Designation	Notes
					New Apt.	New Condo	Existing Apt.	Existing Condos								
Union City	November, 2010	2	No	Yes	100%	0%	100%	0%	NA	Yes	20	Yes	No	No	Yes	No grandfathering of existing smoking units.
Santa Clara County	November, 2010	2	Yes	Yes	100%	100%	100%	100%	NA	Yes	30ft	Yes	No	NA	No	No grandfathering of existing smoking units.
Contra Costa County	October, 2010	4	Yes	Yes	100%	100%	0%	0%	NA	Yes	20 ft	Yes	Yes	Yes	No	
Sebastopol	August, 2010	2	Yes	Yes	100%	100%	100%	100%	NA	Yes	NA	Yes	NA	NA	Yes	No grandfathering of existing smoking units.
South Pasadena	August, 2010	2	Yes	Yes	100%*	100%*	100%*	100%*	NA	Yes	25 ft	Yes	Yes	Yes	No	* Process for creating up to 20% smoking units
Pinole	April, 2010	2	Yes	Yes	100%	0%	0%	0%	NA	Yes	20 ft	No	No	No	No	
Pleasant Hill	April, 2010	4	No	Yes	100%	0%	50%	0%	Yes	Yes	20 ft	No	No	No	Yes	
Glendale	March, 2010	2	Yes	Yes	0%	0%	0%	0%	NA	Yes	none	No	Yes	Yes	No	Condos included in common area prohibitions
Richmond	July, 2009	2	Yes	Yes	100%	100%	100%	100%	NA	Yes	NA	Yes	Yes	Yes	Yes	No grandfathering of existing smoking units.
Martinez	April, 2009	4	Yes	Yes	0%	0%	0%	0%	NA	Yes	NA	Yes	Yes	Yes	Yes	
Rohnert Park	April, 2009	2	Yes	Yes	75%	75%	50%	50%	Yes	Yes	None	No	No	Yes	Yes*	* Smoking in area prohibited is a nuisance
Dublin	December, 2008	16	No	Yes	50%	0%	50%	0%	Yes	Yes	None	Yes	Yes	Yes	Yes	
Loma Linda	June, 2008	2	No	Yes	70%	0%	70%	0%	Yes	Yes	None	Yes	Yes	Yes	Yes	
Albany	June, 2008	2	Yes	Yes	0%	0%	0%	0%	NA	No	NA	No	Yes	Yes	No	
Novato	April, 2008	10	No	Yes	75%	0%	50%	0%	Yes	Yes	None	Yes	Yes	Yes	Yes*	* Nuisance in place of human habitation
Calabasas	January, 2008	2	No	Yes	80%	0%	80%	0%	Yes	Yes	None	Yes	Yes	Yes	Yes	
Oakland	December, 2007	2	Yes	Yes	0%	0%	0%	0%	NA	No	NA	No	Yes	Yes	No	
Belmont	October, 2007	2	Yes	Yes	100%	100%	100%	100%	NA	Yes	20 ft	Yes	Yes	NA	Yes	Units must share a common wall or ceiling
Temecula	May, 2007	10	No	Yes	25%	0%	25%	0%	Yes	No	None	No	No	Yes	No	

City Council  
 Exhibit 2 to  
 Agenda Item #7-A  
 04-05-11

## EXTERNAL CORRESPONDENCE

The City Clerk's Office received the  
attached external correspondence  
regarding  
**Agenda Item #7-A on the  
4-5-11 Regular City Council Agenda**

**From:** Merle Yost <merle@myost.com>  
**To:** <lweisige@ci.alameda.ca.us>  
**CC:** Adrian Blakey <adrianblakey@gmail.com>  
**Date:** 3/31/2011 2:32 AM  
**Subject:** non smoking ordinance

Alameda Mayor and City Council,

I have learned that the Mayor and City Council will be considering a non smoking ordinance for Alameda.

I have lived in Alameda for 7 years and the East Bay for 22 years.

In August 2009 I bought a condo in Alameda on Shoreline Dr. in the Capri Condos. What was not disclosed to me at the time by the owners was that the owners of the unit below me smoked and smoked a lot. The unit that I bought was so dirty and foul smelling that it was not until after I cleaned up the unit and moved in, that I discovered that my unit was frequently flooded with cigarette smoke.

I brought this issue to the attention of the Capri Condo Board of Directors. All steps that could be legally taken were taken to assist me in reducing or eliminating the smoke. We even attempted to pass a no smoking rule for the entire complex that received over 50% of the vote but not the 2/3's necessary to become part of the CC&R's.

Through inspections and efforts made on the home owners below me, the problem has been reduced but not eliminated. They now smoke on their balcony as the weather permits and it floats up and comes in my open doors or windows. Also, as the weather has not been cooperative as of late, they smoke inside and I must keep my master bathroom door closed as it often smells like a bar in the 80's.

I believe it is time stop smoking in existing multi-unit buildings. There is plenty of research to back up that second hand smoke is dangerous to support this decision. It is okay if people want to smoke, I believe they should leave the premisses to do so. Smoking decreases home values, it increases health care costs. I

I am allergic to smoke. I seek regular medical attention that would not be necessary without the constant intrusion of smoke into my home.

I love Alameda and I love my home. I do my best to be a respectful neighbor and I think being a respectful neighbor is not forcing them to breath your smoke. I think it is time for Alameda to be at the fore front of stopping second hand smoke and making this a better world for everyone.

Sincerely,

Merle Yost, LMFT

RECEIVED

December 27, 2010

2010 DEC 28 P 1:36

Alameda City Council  
2263 Santa Clara Ave # 320  
Alameda, CA 94501-4478

CITY OF ALAMEDA  
CITY CLERK'S OFFICE

Dear Council Members:

I am writing to ask that the Council consider adopting an anti-smoking law for all apartments in Alameda. I currently live in an apartment complex in Alameda where there are at least two tenants who smoke in the common area courtyard. I have spoken to the on-site manager about the issue and she advised me that since there are no laws restricting smoking at the complex and no rules adopted by the management of the complex restricting smoking, there is nothing she can do.

I suffer from asthma and allergies and don't think that it's acceptable to be forced to breathe in second-hand smoke just because there isn't a law or rule forcing apartment owners and managers to consider the rights of those who do not smoke.

I would appreciate the Council's consideration in adopting a law prohibiting smoking in apartment complexes.

Thank you,



Kim Ward